



Commonwealth of Massachusetts State Ethics Commission

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**SUFFOLK, ss
ADJUDICATORY**

**COMMISSION
DOCKET NO. 06-0006**

IN THE MATTER OF ANDREW HAMILTON

DISPOSITION AGREEMENT

The State Ethics Commission and Andrew Hamilton enter into this Disposition Agreement pursuant to Section 5 of the Commission's *Enforcement Procedures*. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, § 4(j).

On December 14, 2005, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Hamilton. The Commission concluded its inquiry and, on March 9, 2006, found reasonable cause to believe that Hamilton violated G.L. c. 268A.

The Commission and Hamilton now agree to the following findings of fact and conclusions of law.

Findings of Fact

1. From 2002 through June 2004, Hamilton was an elected Wendell Board of Health ("BOH") member. During the relevant time, Hamilton served as the BOH chairman.
2. In his private capacity, Hamilton sells water filtration systems.
3. The BOH has authority over potable water supplies. The BOH will only sign-off on a building permit application if the well water sample does not exceed the maximum recommended levels for certain chemicals in the well water. If the BOH finds that a water sample does not meet the acceptable levels, it can issue a conditional permit ordering the property owner to correct the problem.
4. In Spring 2003, Reverend Adele Smith-Penniman had construction done on her weekend home in Wendell to convert it into a year-round dwelling. Smith-Penniman had a new septic system and well installed on her property. Water samples from the well were submitted to an independent lab, which then forwarded its findings to the BOH.
5. In June 2003, Hamilton as a BOH member spoke with Smith-Penniman and informed her that her well water's iron and manganese levels were too high. Hamilton told Smith-Penniman that the work being done on her home had to stop until the water issue was addressed. Hamilton then told Smith-Penniman that he was going to "change hats" and speak with her in his private capacity. Hamilton then informed Smith-Penniman that he sold water filtration systems that could correct her water problem.

6. A couple days later, Hamilton sold Smith-Penniman a water filtration system for \$1,112. Smith-Penniman felt pressure to purchase the water filtration system because Hamilton was on the BOH and because the BOH signs-off on building permits.

7. Smith-Penniman accepted delivery of the water filtration system but did not install it. The BOH conditionally signed-off on Smith-Penniman's building permit. Usage of the well worked out the contaminants.

8. Hamilton agrees to return to Smith-Penniman the money she paid for the water filtration system in exchange for return of the unit to him.

Conclusions of Law

9. General laws, c. 268A, § 23(b)(2) prohibits a municipal employee from knowingly, or with reason to know, using his official position to secure for himself or others unwarranted privileges which are of substantial value and not properly available to similarly situated individuals.

10. As the Wendell BOH chairman, Hamilton was a municipal employee within the meaning of G.L. c. 268A.

11. Hamilton knew he was using or attempting to use his BOH position to influence Smith-Penniman to purchase his water filtration system. This is because (1) he solicited someone who was subject to significant pending action by his board – a stop work order; (2) and as a board member he was in a position to affect the board's actions regarding that matter; and (3) he made his solicitation in the course of an official discussion where he addressed the work order issue.

12. The privilege was securing for himself the sale of the water filtration system.

13. The privilege was unwarranted because Hamilton obtained the sale by using the influence and power of his BOH position to obtain a personal benefit for himself and his business.

14. The privilege was of substantial value as the sale was worth more than \$50 to Hamilton.

15. This unwarranted privilege was not otherwise properly available to similarly situated people because public officials may not use their public positions to obtain private business.

16. Therefore, by knowingly using his position as a BOH member in securing for himself an unwarranted privilege of substantial value not properly available to similarly situated individuals, Hamilton violated §23(b)(2).

Resolution

In view of the foregoing violations of G.L. c. 268A by Hamilton, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Hamilton:

- (1) that Hamilton pay to the Commission the sum of \$2,000 as a civil penalty for violating G.L. c. 268A as noted above;

- (2) that Hamilton pay Smith-Penniman the sum of \$1,112 for the water filtration system she purchased from him;¹ and
- (3) that Hamilton waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: March 22, 2006

¹ Smith-Penniman has agreed to return the water filtration system to Hamilton.